Filed 8/31/06 In re Mary D. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Mono)

In re MARY D., a Person Coming Under the Juvenile Court Law.	
MONO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Respondent, v. ANTHONY D., Defendant and Appellant, CHALSEY D., Respondent.	C050211 Super.Ct.No. 3SCJ1359

Anthony D., the father of 16-year-old Mary D., appeals from orders of the Mono County Juvenile Court declaring Mary a dependent, removing her from his custody, awarding custody to her mother, Chalsey D., and terminating jurisdiction. (Welf. & Inst. Code, §§ 300, subd. (c), 361, subd. (c)(1), 361.2, subd.

(a), (b)(1), 395; further statutory references are to the Welfare and Institutions Code.)

On appeal, the father contends the evidence was insufficient to support (1) assumption of jurisdiction under section 300, subdivision (c); (2) removal of Mary from his custody; and (3) placement with the mother and termination of jurisdiction. We shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The mother and the father have three sons and three daughters. The mother resides in Tennessee and has physical custody of the sons. The father resides in Mammoth Lakes and the oldest daughter, an adult, lives nearby. The father has physical custody of the two younger daughters, Angela and Mary. However, during most of the events preceding the assertion of juvenile court jurisdiction, Angela resided with the mother and the father lived alone with Mary. The parents have been engaged in a lengthy marital dissolution and child custody battle.

In October 2004, Mono County Social Services (Social Services) filed a petition alleging that Mary was within section 300, subdivisions (a), (b), (c) and (j). The petition alleged, among other things, that Mono County CPS had received a report of suspected child abuse. The father allegedly kicked, hit, pushed, and pulled the hair of Mary, who refused to return home. The father told an investigator that the girls tend to be patterned after their mother, who “became a slut after the couple separated.” The report was substantiated for emotional

abuse. The petition also alleged a prior report of suspected abuse.

Social Services filed a "detention report"[1] describing a lengthy social service history including a substantiated June 2004 report regarding the father in Mono County, a substantiated 2002 allegation regarding the mother in Tennessee, a substantiated allegation of general neglect regarding the father in Kern County, and two substantiated allegations of general neglect regarding the mother in Kern County. The report included letters from psychologist Kevin C. Seymour, Ph.D., who had been counseling the girls since 1998.

At a hearing in October 2004, the court found a prima facie showing had been made that Mary was within section 300. Counsel for Social Services indicated the agency was not seeking to have Mary detained.

At a December 2004 prehearing conference, the parties stipulated that Mary would undergo a psychological evaluation by Nicholas Dogris, Ph.D. A further prehearing conference was scheduled for February 2005.

Prior to the February 2005 conference, Social Services filed a section 387 petition for a more restrictive placement. The petition alleged several recent events, including: the father attempted to push Mary down a flight of stairs; he entered her bedroom and stared at her while she was in her

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[1] The title was a misnomer because Mary had not been detained.

underwear; he "mooned" her; he or she had summoned the police to the residence on five occasions; while driving, she "'slashed him across the face with a pen,'" whereupon he drove her to a police station to file an assault report; he isolated her from the outside world by disconnecting the home telephone, blocking her e-mail, removing Angela from the house, requiring Mary to be home at all times when not in school, monitoring calls she places on his cellular phone, and preparing to have her home-schooled.

At a hearing in January 2005, the juvenile court ordered Mary detained in foster care. The court found that there was "conflict between [Mary] and her father," which was "emotionally harmful to" her, and that returning her to the father's home was not in her interest but would be detrimental to her.

In March 2005, DHHS filed a section 388 petition alleging that Mary was within subdivisions (a) and (c) of section 300. At the jurisdiction hearing, Social Services explained that the section 388 petition superseded the two prior petitions.

Social Services filed a jurisdiction report that recited the history of the case and described the evidence supporting the allegations of the section 388 petition. The report discussed the results of Dr. Dogris's psychological evaluation.

The jurisdiction hearing commenced on March 4, 2005. Social Services moved its various reports and attachments into evidence. Dr. Dogris's testimony is summarized in part I of our Discussion; Angela's friend, K.S., testified about her one- to

two-week stay at the father's home in the summer of 2004; Mary, the social worker and the father also testified.

Following argument, the juvenile court found that there was insufficient evidence of serious physical harm (§ 300, subd. (a)), but there was ample evidence of serious emotional damage (§ 300, subd. (c)).

At the disposition hearing, Mary testified that her first preference was to remain with her foster mother. However, the foster mother's health issues necessitated a change of placement. Thus, Mary was willing to live with her mother in Tennessee.

The social worker testified that, although allegations of child neglect had been made against the mother, the only ones that were substantiated concerned issues that were unlikely to reoccur.

The father testified that he strongly disagreed with the recommendation of Social Services to place Mary with the mother. His visits with Mary had been good and his drug tests had been clean. He believed the mother and maternal aunt had coached Mary on what to say in court.

The mother testified that Tennessee authorities investigated her home in 2002 and 2003. They did not sustain any charges or uphold any allegations against her. She believed she could provide Mary a safe and loving home.

The juvenile court found by clear and convincing evidence that there was a substantial danger to Mary's physical health and emotional well-being if she were returned to the father's

home. Mary was declared a dependent of the court, removed from the custody of the father, and placed in the custody of the mother. After initially reserving jurisdiction and setting the matter for review in 60 days, the court reconsidered and terminated jurisdiction.

DISCUSSION

I

The father contends the juvenile court's finding that Mary is within section 300, subdivision (c), is not supported by substantial evidence. He claims the evidence showed no offending parental conduct by him, no emotional suffering by Mary, and no causation; at most, the evidence showed that he and Mary had "a strained relationship." None of these contentions has merit.

When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing, the reviewing court must determine if there is any substantial evidence -- that is, evidence that is reasonable, credible and of solid value -- to support the conclusion of the trier of fact. (*In re Angelia P*. (1981) 28 Cal.3d 908, 924; *In re Jason L*. (1990) 222 Cal.App.3d 1206, 1214.) In making this determination we recognize that all conflicts are to be resolved in favor of the judgment and that issues of fact and credibility are questions for the trier of fact. (*In re Jason L.*, *supra*, 222 Cal.App.3d at p. 1214; *In re Steve W.* (1990) 217 Cal.App.3d 10, 16.) The reviewing court may not reweigh the evidence when assessing the

sufficiency of the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

Section 300 provides in relevant part that a child is within juvenile court jurisdiction when he or she "is suffering serious emotional damage, or is at a substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent. . . ." (§ 300, subd. (c).) Under this provision, "the petitioner must prove three things: (1) the offending parental conduct; (2) causation; and (3) serious emotional harm or the risk thereof, as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior." (*In re Alexander K.* (1993) 14 Cal.App.4th 549, 557.)

We begin with the evidence of serious emotional harm. In his written evaluation and his testimony, Dr. Dogris opined that Mary was experiencing psychiatric problems associated with depression, impulse control, antisocial traits, paranoia and suicidal ideation. Dr. Dogris testified that Mary was seriously suffering emotionally, as evidenced by severe anxiety, depression, and suicidal thoughts. Dr. Seymour, who had worked with Mary and the father in family therapy, agreed that Mary demonstrated symptoms consistent with adolescent depression.

Dr. Dogris acknowledged in his written evaluation and in his testimony that it was possible Mary created her allegations in order to manipulate the system. Seizing upon this acknowledgment, the father claims there was a "strong

possibility" that the depression diagnosis was "not accurate." We disagree.

Dr. Dogris explained that the possibility of manipulation was contradicted by "the results of the testing." Some of his standardized tests had built-in measures of validity and reliability. Furthermore, in his experience, "a person that is attempting to manipulate the system will also attempt to manipulate the testing." However, Mary's testing "was very blunt and straight forward" and "to the point." She did not attempt through the testing to present herself as a good girl or as having an infallible moral character. Dr. Dogris believed "she answered honestly. She was open about her defiance. She was open about her paranoia, her anxiety, her irritability." Because the evidence suggested that Mary had been honest about herself, Dr. Dogris was inclined to believe that she was being honest with respect to her other information.

In finding that "Dr. Dogris was really very accurate in his analysis of this case," the juvenile court impliedly accepted Dr. Dogris's stated resolution of the issue of Mary's credibility. We are not free to reweigh the evidence and conclude the depression diagnosis is not accurate. (*In re Stephanie M., supra,* 7 Cal.4th at pp. 318-319.)

In addition to the evidence of depression, there was evidence that Mary was suffering "serious emotional damage," in that she had engaged in "untoward aggressive behavior toward . . . others." (§ 300, subd. (c).) In an argument with the father, Mary had thrown a pomegranate against a wall and smashed

it into the carpet, had “flipped [the father] off in [his] face,” and had thrown a dish through a window, breaking it. In another argument with the father, she had “vandalized the inside of [his] car” and had “slashed [him] across the face with a marker,” after which he took her to the police department where the battery and vandalism were reported. (RT 19)

This case is not like *In re Brison C.* (2000) 81 Cal.App.4th 1373, on which the father relies. In *Brison C.*, the evidence showed only that “Brison, an otherwise reasonably well-adjusted child who performed well at school and displayed no serious behavioral problems, despised his father and desperately sought to avoid visiting him.” The court concluded that, “[s]tanding alone, this circumstance is insufficient to support a finding that Brison is seriously emotionally damaged.” (*In re Brison C., supra,* 81 Cal.App.4th at p. 1376.)

Here, in contrast, Mary was not reasonably well-adjusted, did not perform well at school, and was having behavioral problems that were so severe that the father sought law enforcement help.

We next consider the evidence that the father’s abusive conduct caused Mary’s severe emotional damage. Dr. Dogris opined in his evaluation that “Mary has sustained emotional damage from the ongoing custody dispute as she has been pulled from parent to parent. This serves to disrupt her life significantly and prevents her from being able to feel a sense of stability. [The father] is intently focused on this dispute and appears to have projected his beliefs about [the mother]

onto Mary. *This is extremely abusive and has caused Mary to sustain[] emotional damage in my opinion*." (Italics added.)

Dr. Dogris testified that Mary's burgeoning sexuality during the events in question caused difficulties between her and the father. It was possible that the father was afraid of Mary's sexuality, which he identified with the mother. That identification was evident in the father's statement to Dr. Dogris that "the problem began when Mary began seeing a boyfriend. [The father] stated that his [e]x-wife had 'whored around' and that her influence caused Mary to begin seeing her boyfriend."

Dr. Seymour agreed that the father's battle with the mother caused Mary's psychological distress. He wrote that the family had been involved in a highly contested divorce, court battles, custody changes, accusations, and emotionally charged allegations since they first came to him in 1998. He concluded that the children had "suffered from emotional abuse as would any child in such a heat[ed] and relentless divorce and custody situation." The children had been "exposed to alienating comments and actions from both parents," had been required to "interface with the court system, the child protective service system, and police on several occasions over the years," and had "shifted between homes, struggled with each parent," and had "moved to several communities."

Mary testified that for years, on a daily basis, the father had called the mother a whore. He has repeatedly called Mary a whore or a slut, saying that she is patterning herself after the

mother; she will get pregnant; and she will never amount to anything. Mary testified that, when the father talks that way, it makes her feel horrible. She explained: "I see my friends and their fathers and they have this great relationship. And when it comes to me and my dad, he always has to just, he always degrades me. I never feel good around him. And it really hurts. I don't like to show it to anyone, but it really does. And I think he knows this too."

Mary testified that the father's emotional abuse caused her to feel depressed, unhappy and endangered. She said she and the father constantly fight and are always "at each others' throats." She confirmed her statement to Dr. Dogris that she would kill herself if ordered to return to the father's house. Dr. Dogris believed that Mary was "actively suicidal," although she was not in imminent danger, because she was not then residing with the father.

Overlooking this compelling evidence, the father boldly claims there "was no evidence that [he] perpetrated emotional abuse on Mary." In his view, he "had rules and Mary liked to challenge those rules. [Citations.] Thus, Mary brought most of her problems on herself." This contention "only tend[s] to establish a factual context which, had it been credited by the trial court, might have led to a different decision. Such contentions are facially meritless in light of the standard of

review in this court. [Citations.]" (*In re Charmice G.* (1998) 66 Cal.App.4th 659, 664.)[2]

The finding that Mary was within section 300, subdivision (c), is supported by substantial evidence. (*In re Angelia P., supra,* 28 Cal.3d at p. 924; *In re Jason L., supra*, 222 Cal.App.3d at p. 1214.)

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[2] The court in *In re Anne P.* (1988) 199 Cal.App.3d 183 (*Anne P.*) upheld a juvenile court's finding that a child was within section 300, subdivision (a), in that she was suffering from a severe psychological disturbance caused by the unrelenting struggle between her divorced parents. (*Anne P.*, at pp. 190, 199.) She was "'conflicted, confused, suffering a sense of loss, depression' and had 'tremendous unmet needs.'" (*Anne P., supra,* at p. 190.) She had also developed a near pathological fear of men. (*Id.* at p. 191.)

Subsequently, the court in *In re Sarah M.* (1991) 233 Cal.App.3d 1486 (*Sarah M.*) found that *Anne P.* was "so factually distinct" from the case before it as to be "of no help to" the mother. (*Id.* at p. 1498; disapproved on other grounds in *In re Chantal S.* (1996) 13 Cal.4th 196, 204.)

Thereafter, the court in *In re John W.* (1996) 41 Cal.App.4th 961 (*John W.*) stated that jurisdiction in the case before it "was predicated on a 'tense' atmosphere caused by a parental divorce. That was hardly enough." The court cited *Sarah M.* for the proposition that "family strife" was not a basis for continued juvenile court supervision "where the child did not exhibit 'tremendous unmet needs' or 'pathological fear.'" (*John W., supra*, at p. 977.)

In the present case, the father relies on *John W.* for the proposition that family strife cannot support juvenile court jurisdiction, "*unless* the child exhibited" tremendous unmet needs or pathological fear. (Italics added.) We disagree. While *Anne P.* found those factors were *sufficient* for juvenile court jurisdiction, *Sarah M.* did not hold that they were *necessary*. To the extent that *John W.* suggests they are necessary factors, we respectfully decline to follow it.

II

The father next contends the juvenile court's removal of Mary from his custody was erroneous because there was insufficient evidence of risk of harm and less drastic measures were available. Neither point has merit.

To support an order removing a child from parental custody, the juvenile court must find clear and convincing evidence "[t]here is a substantial danger to the physical health, safety, protection or physical or emotional well-being of the minor or would be if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the parent's . . . physical custody." (§ 361, subd. (c)(1).) We review the juvenile court's finding only for substantial evidence. (*In re Angelia P., supra,* 28 Cal.3d at p. 924; *In re Jason L., supra*, 222 Cal.App.3d at p. 1214.)

We have already noted Mary's testimony that she would kill herself if ordered to return to the father's house. Dr. Dogris testified that Mary was "actively suicidal," although she was not in imminent danger because she was not then residing with the father.

In his opening brief, father overlooked this evidence of substantial danger to physical health if Mary were returned to him. (§ 361, subd. (c)(1).) His argument failed to identify any "reasonable means by which" the risk of suicide could be eliminated, and Mary's "physical health" "protected," without removing her from his home. (§ 361, subd. (c)(1).) The

argument emphasized that father and daughter had made progress in therapy, but it did not suggest the danger of suicide had been eliminated *by the time of the hearing*. To the extent the danger would be eliminated only thereafter, the therapy was not a reasonable means of protection.

In his reply brief, the father claims "Mary, herself, admitted that at the time of the dispositional hearing, her depression only went in and out and she *did not indicate any present suicidal ideation.*" (Italics added.) The father misreads the record.

Mary acknowledged to the father's counsel that she had written a poem about suicide. Counsel then asked Mary: "And is your general state of mind still one of severe depression and suicide ideations that Dr. Dogris talked about a little bit?" Mary answered, "Yes. It goes in and out."

Thus, Mary agreed that the state of mind posited by the question "goes in and out." That state of mind "still" included suicide ideations. No evidence suggested her state of mind was otherwise. The removal order is supported by substantial evidence. (*In re Angelia P., supra,* 28 Cal.3d at p. 924; *In re Jason L., supra*, 222 Cal.App.3d at p. 1214.)

III

The father contends the orders placing Mary with the mother and terminating jurisdiction are not supported by sufficient evidence that the mother was a "nonoffending parent," and that continued supervision was unnecessary. Neither point has merit.

Section 361.2 establishes the procedures a court must follow for placing a dependent child following removal from the custodial parent pursuant to section 361. (*In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1820.) When a court orders removal of a minor under section 361, the court "shall first determine" whether there is a parent who wants to assume custody who was not residing with the minor at the time the events that brought the minor within the provisions of section 300 occurred. (§ 361.2, subd. (a).) If that parent requests custody, the court "shall place" the child with the parent unless "it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." (*Ibid*.)

Where as here the court makes no finding of detriment and places the child with the parent, the decision is reviewed for abuse of discretion. "[W]hen a court has made a custody determination in a dependency proceeding, '"a reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations]."' [Citations.]" (*In re Stephanie M., supra,* 7 Cal.4th at p. 318.)

The father contends the juvenile court abused its discretion by failing to find detriment to Mary's safety, protection, or physical or emotional well-being if she were placed with the mother. The father relies on the mother's "long history of child abuse referrals." However, the social worker testified that most of the referrals were unsubstantiated. The

father had a history of making unfounded child abuse allegations against the mother. The most recent substantiated allegation in California was more than six years previous; the mother has since completed a family maintenance service plan that improved her parenting skills. A substantiated allegation in Tennessee involved a lack of supervision of her children then eight, nine and ten years old, due to a childcare miscommunication. The children had since reached their mid- to late-teens and the problem was unlikely to reoccur.

The father argues that the mother has been locked in a custody battle with him for years. However, he identifies no evidence of current efforts by the mother to perpetuate the battle.

The father claims placement with the mother would be detrimental because Mary believed she might have trouble in high school, and because she might be home-schooled and unsupervised. However, the juvenile court was not required to speculate that home-schooling or a move to a new school would be detrimental to Mary's emotional well-being. (§ 361.2, subd. (a).)

The father testified that he had spoken to Mary regarding her recent visit to the mother's house in Tennessee. He explained that she had described the mother's house as "total chaos, total disaster," where "the boys were totally wild," with "no supervision ever." On appeal, he claims, "Mary herself presented evidence that Mother's home was deficient." However, his only citation is to his own testimony. Father has not shown that the juvenile court's implicit rejection of Mary's hearsay

statements was arbitrary, capricious or patently absurd. (*In re Stephanie M., supra,* 7 Cal.4th at p. 318.)

Father lastly contends the juvenile court erred by terminating jurisdiction over Mary because supervision remained necessary. We disagree.

When a juvenile court transfers custody to the non-custodial parent pursuant to section 361.2, it can terminate jurisdiction if it finds ongoing supervision is no longer necessary. (*In re Austin P*. (2004) 118 Cal.App.4th 1124, 1135.)

Because Mary was being placed with the mother in Tennessee, and the evidence suggested that the father would be moving there as well, the juvenile court concluded that ongoing supervision could effectively be performed only by a Tennessee court and thus supervision by the California court was no longer necessary. Assuming the father has standing to raise this issue (but see *In re Carissa G.* (1999) 76 Cal.App.4th 731, 736-737), he has not shown that the juvenile court's determination was an abuse of discretion.

DISPOSITION

The judgment is affirmed.

MORRISON, Acting P.J.

We concur:

ROBIE, J.

BUTZ, J.